

FIRST APPEALS NO.1424 & 1425 both of 1994

Date of decision: July 15, 1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

The Hon'ble Mr.Justice A.R.Dave

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,19..  
  
thereunder?
5. Whether it is to be circulated to the Civil Judge?

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Mr.G.T.Dayani, L.A. for the Appellant  
Mr.D.C.Dave, L.A. for the respondents  
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Coram: N.J.Pandya & A.R.Dave,JJ.  
July 15, 1996

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ORAL JUDGMENT (Per N.J.Pandya,J.)

Admit. With the consent of the parites, these two appeals are taken up for final hearing.

2. After going through the evidence with the assitance rendered at the bar by both the learned

Advocates appearing for the respective parties, it seems that the appeals have to be accepted with regard to the amount of security deposit which is Rs.22,500/- and a sum of Rs.5,000/- further towards deduction of the work already done.

3. So far as the refund of security deposit is concerned, looking to the facts of the case, it is required to be ordered in favour of the appellant. Likewise, the said sum of Rs.5,000/- is also required to be adjusted in the final account. However, it may be noted here that the present-appellant had filed Special Civil Suit No.16/85 and the respondent had filed Special Civil Suit No.18 of 1985. Both these suits came to be disposed of by a common judgment dated 27-5-1994 which came to be pronounced on 13-6-1994 as the learned Judge, who gave the judgment had to leave charge before he could sign it and it came to be pronounced after opening the sealed cover by a successor Judge. The result of the decree passed was that Special Civil Suit No.16 of 1985 of the appellant-plaintiff came to be dismissed and Special Civil Suit No.18 of 1985 of the respondent-defendant came to be partly allowed.

4. As a result in Special Civil Suit No.18 of 1985 decree for Rs.1,67,833.92 came to be passed in favour of the respondent, who was the plaintiff of the said Special Civil Suit No.18 of 1985.

5. Once the aforesaid two amounts are held to be payable to the present appellant, that amount of Rs.27,500/- will have to be deducted from the said decretal amount and therefore, the decree will have to be modified to that extent. The appeals shall stand allowed to that extent. On account of the said deduction of Rs.27,500/- being allowed by this judgment, the decree that is passed in favour of the respondent is for Rs.1,40,333.92. It shall carry the interest as awarded by the trial Court. Rest of the order of the trial Court shall remain as it is. As on the date, according to the said calculation the amount comes to Rs.2,60,430/-. The aforesaid figures are taken from the calculation that has been worked and produced by the appellant after giving a copy thereof to the respondent.

6. Our order would have ended here but for the fact that the other side has agreed to grant instalments to the appellant on the condition that for due fulfillment of the instalment, an undertaking shall be given by the appellant on or before 31-7-1996. The amount is to be paid in equal monthly instalments and during the said

period of six months, the amount of interest shall proportionately be reduced by dividing the amount into principal sum and interest in proportion to what has been ordered by the trial Court. In case of failure of payment of two consecutive instalments, the entire amount shall become due and it can be recovered by filing an execution application before the trial Court. Under the circumstances, there shall be no order as to costs.

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